

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

VANESSA NICHOLE READO,
LULA MAE FRANK,
RICKY BLAINE WATKINS

CASE NO.: 19-31379-KKS
CASE NO.: 20-30011-KKS
CASE NO.: 19-31341-KKS

Debtors.

CHAPTER: 13

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**SUPPLEMENTAL RULING IN SUPPORT OF ORDERS
CONFIRMING PLANS** ¹

THESE CASES came before the Court for hearing on July 29, 2020 to consider confirmation of the Debtors' Chapter 13 plans ("Plans").² In each case the Chapter 13 Trustee ("Trustee") filed an objection to confirmation and the Debtor filed a response. Each Debtor asserted the same legal defenses. Appearing at the hearing were William Miller, attorney for the Trustee and Martin Lewis, attorney for all three Debtors.

¹ This Order supplements the confirmation orders entered in each case as follows: *In re Reado*, Case No.: 19-31379-KKS, Doc. 48, *Order Confirming Plan and Order to Debtor(s)* (Bankr. N.D. Fla. July 31, 2020); *In re Frank*, Case No.: 20-30011-KKS, Doc. 39, *Order Confirming Plan and Order to Debtor(s)* (Bankr. N.D. Fla. Aug. 12, 2020); and *In re Watkins*, Case No.: 19-31341-KKS, Doc. 28, *Order Confirming Plan and Order to Debtor(s)* (Bankr. N.D. Fla. July 31, 2020).

² *In re Reado*, Case No.: 19-31379-KKS, Doc. 41, *First Amended Chapter 13 Plan* (Bankr. N.D. Fla. June 25, 2020); *In re Frank*, Case No.: 20-30011-KKS, Doc. 32, *First Amended Chapter 13 Plan* (Bankr. N.D. Fla. June 25, 2020); *In re Watkins*, Case No.: 19-31341-KKS, Doc. 21, *First Amended Chapter 13 Plan* (Bankr. N.D. Fla. June 1, 2020).

The Court heard argument of counsel for Debtors and the Trustee simultaneously because the legal arguments were identical

For the reasons articulated below, the Trustee's objections to confirmation are sustained as to this issue: where a creditor files a timely secured and unsecured claim and the debtor proposes to surrender the creditor's collateral through a Chapter 13 plan, the creditor is not required to amend its unsecured claim post-confirmation to be entitled to payment on that claim from the Trustee.

BACKGROUND

Each Debtor's Chapter 13 plan proposed to surrender personal property. In each case, the creditor with the lien on the item to be surrendered filed a timely proof of claim listing a portion of the amount due as secured and a portion as unsecured. In her objections to confirmation the Trustee put Debtors, their counsel, creditors and others on notice that she intended to pay the unsecured deficiency portion of each timely filed proof of claim, including those asserted by the creditors whose collateral was being surrendered.³ In their responses, Debtors

³ The Trustee indicated that she would pay the timely unsecured claims as filed unless a party filed, and the Court sustained an objection to that claim. *See, e.g., In re Reado*, Case No.: 19-31379-KKS, Doc. 43, *Chapter 13 Trustee's Objection(s) to Confirmation of First Amended Chapter 13 Plan* (Bankr. N.D. Fla. July 2, 2020).

argue that the Trustee lacks authority to thus “split” the creditors’ claims.

Because this issue did not truly affect confirmation of Debtors’ plans, but rather the Trustee’s payments to creditors post-confirmation, at the conclusion of the hearing the Court announced that the Plans would be confirmed. This Order supplements the Court’s additional ruling at the hearing that under these facts the Trustee has the legal authority to pay creditors in accordance with timely filed proofs of claim.

DISCUSSION

The parties’ arguments center on the intersection of certain provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), and this Court’s Local Rules.

Bankruptcy Code Section § 502(a) provides: “A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed unless a party in interest . . . objects.”⁴ Bankruptcy Rule 3001(f) provides: “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.”⁵ Bankruptcy Rule 3002(c) provides, in pertinent part: “In a voluntary . . .

⁴ 11 U.S.C. § 502(a) (2020).

⁵ Fed. R. Bankr. P. 3001(f).

chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter”⁶ The creditors in these cases timely filed proofs of claim that include unsecured deficiency claims. No party has objected to those claims.

N.D. Fla. LBR 3002-1 provides in pertinent part:

(A) Upon confirmation of a Chapter 13 Plan that provides for surrender of collateral:

(1) The creditor shall have sixty (60) days from confirmation of the Chapter 13 Plan to amend a timely filed proof of claim regarding any unsecured deficiency balance that may occur upon the sale of the subject collateral if the collateral consists of personal property that was not liquidated within the claims bar date period;⁷

Debtors assert that despite Bankruptcy Code § 502(a) and Bankruptcy Rules 3001(f) and 3002(c), LBR 3002-1 mandates that creditors with claims secured by personal property being surrendered must file amended claims, even if they timely filed a partially unsecured claim. They argue that the Trustee’s proposed treatment of timely filed bifurcated claims runs contrary to the intent of LBR 3002-1 and negatively impacts other creditors that timely filed unsecured claims. The Trustee maintains that adopting Debtors’ interpretation of LBR

⁶ Fed. R. Bankr. P. 3002(c).

⁷ N.D. Fla. LBR 3002-1(A).

3002-1 would result in a direct conflict with 11 U.S.C. § 502(a) and Bankruptcy Rule 3001(f).⁸ Although both sides argued their positions admirably, the Court must agree with the Trustee. It would be inappropriate to enforce a local rule in a manner that effectively negates specific provisions of the Bankruptcy Code and Rules. The evolution of LBR 3002-1 supports this conclusion.

Prior to 2019, the relevant portion of LBR 3002-1 read as follows:

(A) Upon confirmation of the Chapter 13 Plan that provides for surrender of secured collateral back to a creditor:

(1) The secured creditor shall have sixty (60) days from confirmation of the Chapter 13 Plan to file an unsecured proof of claim regarding any deficiency balance that may occur upon the sale of the subject collateral if the collateral consists of personal property that was not liquidated within the claims bar date period;

(2) . . .

(3) The time periods provided above may be extended by Court Order upon the creditor filing an appropriate Motion using negative notice stating the circumstances necessitating a need for a longer period of time and an estimated deficiency;

(4) If no unsecured proof of claim is filed within the given time period and no Motion to Extend the Time is filed, the creditor will then be barred from filing an unsecured proof of claim. If a proof of claim is subsequently filed in violation of this Rule, then that claim is automatically disallowed and

⁸ Fed. R. Bankr. P. 3001(f); and 11 U.S.C. § 502(a) (2020).

the Chapter 13 Trustee shall make no disbursement on such claim unless a Motion and Order allowing the filing of the claim has been entered⁹

This version of the rule allowed a “secured creditor” whose personal property collateral was being surrendered the ability to file, and have allowed, an unsecured deficiency claim, even if it had not filed an unsecured claim before the bar date.

LBR 3002-1 changed in 2019. The Advisory Committee Notes (“Committee Notes”) to the current version of LBR 3002-1 make clear that the changes to that rule were intentional: “references to the ‘secured creditor’ were removed “to avoid confusion in the circumstance where surrender of collateral renders a creditor unsecured;”¹⁰ The Committee Notes further specify that “the [2019] amendments clarify the process for a *secured creditor’s* deficiency claim for surrendered collateral” and “that such claims should be filed as amendments to the original, timely filed *secured claim*.”¹¹

Nothing in the present version of LBR 3002-1 or the Committee Notes suggests that a creditor that timely files a bifurcated claim, as opposed to only a secured claim, must file an amendment to its timely

⁹ N.D. Fla. LBR 3002-1 A. (2011).

¹⁰ Advisory Committee Notes, 2019 Amendment, N.D. Fla. LBR 3002-1.

¹¹ *Id.* (emphasis added).

filed unsecured claim post-confirmation in order to share in the Trustee's distribution under a plan. To the extent that was the Advisory Committee's intent, then LBR 3002-1 will need to be further modified.

Debtors contend that Section 3.6 of this Court's approved form Chapter 13 plan dictates a different result. They suggest that the Trustee's interpretation of LBR 3002-1 adds a new "sub part" to Section 3.6 of the approved form plan, resulting in "split claims." The Court cannot agree. The operative language in Section 3.6 of the approved Chapter 13 plan states: "Any creditor whose collateral is being surrendered may be entitled to an allowed unsecured claim, to be treated in Part 5 below. Certain Local Rules *may apply* to creditors whose claims are secured by property being surrendered."¹² This language does not mandate a creditor with a timely bifurcated claim to file an amended unsecured claim post-confirmation in order to have its unsecured claim allowed. To hold otherwise would impose a requirement not required in the Bankruptcy Code or Rules.

¹² Local Form Chapter 13 Plan, FLNBLF 13-21 (emphasis added). Section 5.1 of the approved plan states "Allowed nonpriority unsecured claims that are not separately classified in Part 5.2 will be paid, *pro rata*." *Id.*

In *In re Shiver*,¹³ this Court embraced language from the Bankruptcy Court for the Middle District of Florida, noting that it can be risky for a creditor to file no claim, or only a secured claim, by the bar date:

The “prudent approach” . . . is for a secured creditor who is uncertain of a deficiency to “file a bifurcated claim composed of a secured and unsecured portion or, in the alternative, the creditor should file a motion to value the collateral and obtain an order determining the amount of deficiency based on Section 506(a) of the Code.”¹⁴

The creditors in these cases did exactly what the Court suggested in *Shiver*: they timely filed proofs of claim comprising a secured claim and unsecured deficiency balance. Nothing in the Bankruptcy Code, Bankruptcy Rules, this Court’s Local Rules, or Debtors’ confirmed Plans requires the creditors to file amended unsecured claims in order to share in distributions from the Trustee. For the reasons stated, it is

ORDERED:

1. The Trustee’s objections to confirmation are SUSTAINED as set forth in this Order; all other objections are OVERRULED.

¹³ *In re Shiver*, 484 B.R. 468 (Bankr. N.D. Fla. 2012).

¹⁴ *Id.* at 471 n.4 (even though the creditor had not filed a claim by the claims bar date, the Court allowed the creditor’s unsecured deficiency claim based on the plain language of the confirmed plan, citing *In re George*, 426 B.R. 895, 901 (Bankr. M.D. Fla. 2010)).

2. The Trustee's proposed treatment of the timely filed bifurcated claims is approved.
3. The Clerk's Office is directed to file this Supplemental Order in each case captioned above.

DONE and ORDERED on October 7, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Cc: all creditors and parties in interest.